

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 902 to 905/JP/2019
निर्धारण वर्ष/Assessment Year : 2007-08 & 2008-09

Shri Liju Kurain A-29, Anand Vihar, Gopalpura Byepass Road, Jaipur-302018.	बनाम Vs.	The ITO, Ward-5(4), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANKPK4816 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri A.K. Gupta (Adv.)
राजस्व की ओर से / Revenue by : Miss Chanchal Meena (ACIT)

सुनवाई की तारीख / Date of Hearing : 16/07/2020
उदघोषणा की तारीख / Date of Pronouncement: 21/07/2020

आदेश / ORDER

PER BENCH:

These four appeals by the assessee are directed against four separate orders of Id. CIT(A)-II, Jaipur arising from the assessment orders passed U/s 144 r.w.s. 147 of the IT Act and penalty orders passed U/s 271(1)(c) of the IT Act for the assessment years 2007-08 & 2008-09 respectively.

2. There is delay of 4 days in filing these appeals the assessee has filed an application for condonation of delay which is supported by an affidavit.

3. We have heard the Id. AR as well as Id. DR on condonation of delay. The assessee has explained the cause of delay as the assessee is a overseas citizen of India holding passport of Australia. Therefore, due to the reasons that the assessee is remained outside India, the appeals could not be filed within the period of limitation. Thus, the Id. AR has pleaded that the delay may be condoned. The Id. DR opposed to the contention of delay and submitted that the reasons explained by the assessee is sufficient or reasonable cause for delay.

3.1 Having considered the reasons explained by the assessee and particularly the fact that the assessee is a holder of Australian passport and in the interest of justice. The delay of 4 days in filing the appeal is condoned.

4. All the four appeals were decided by the Id. CIT(A) vide impugned ex-parte order. Even the assessment orders as well as the penalty orders were also passed ex-parte by the AO due to non attendance of the proceedings by the assessee. The Id. AR of the assessee has submitted that the assessee is a living outside India,

therefore, the notices issued by the AO U/s 148 as well as U/s 142(1) of the IT Act were not served upon the assessee. Even the Assessing Officer has admitted this fact that the assessee was not residing at the place where the notices were sent by the AO. He has referred to the assessment orders and submitted that the notice sent through speed post was return back with postal remarks "addressee moved". Thereafter the AO sent notices through sever who reported that at the given address the landlord stated that the assessee was tenant and he has vacated the house 6-7 years back and present whereabouts are not known. Therefore, the notices issued by the AO U/s 148 as well as U/s 142(1) of the Act were not served upon the assessee. The Id. AR has thus submitted that the reassessment framed U/s 144 r.w.s. 147 of the Act is not valid for want of valid service of notice issued U/s 148 as well as U/s 142(1) of the Act. The Id. AR has also referred affidavit filed by the assessee wherein the assessee as stated that the assessee was out of India when the notices were issued by the AO, therefore, assessee was not given an appropriate opportunity of hearing either by the AO or by the Id. CIT(A) to explain the source of expenditure incurred through credit card. He has further submitted that the expenditure were incurred by the assessee through the credit card given by the company

in which the assessee is working as an employee and therefore, all these expenditure were incurred on behalf of the company. Therefore, assessing income in the hand of the assessee otherwise not sustainable when the credit card was given by the company and the expenditure were not incurred by the assessee in his personal capacity. Thus Id. AR has submitted that the orders passed by the authorities below may be set aside.

5. On the other hand, Id. DR has submitted that the Assessing Officer has issued notice at the address which is available with the Department as per PAN data base. The assessee has moved out of country without living a fresh address. Therefore, in these facts and circumstances the AO had no option but to issue and serve the notice at the last known address of the assessee. The service of the notice issued U/s 148 as well as U/s 142(1) were finally affected through affixation which is one of the prescribed mode under section 282 of the IT Act. The Id. DR has submitted that the AO cannot be held as fault when the assessee himself has left India without living the fresh address. She has relied upon the orders of the authorities below.

6. We have considered the rival submissions as well as relevant material on record. There is no dispute that the assessments were

framed by the AO U/s 144 r.w.s. 147 for the assessment years 2007-08 & 2008-09. The AO has accepted this fact that the assessee was not available at the address where the notices issued U/s 148 as well as U/s 142(1) of the Act. This fact has been narrated by the AO in the assessment as under:-

"The notice sent through speed post was returned back with the remarks of the postal authorities "addressee moved". Thereafter the notice was sent through the notice server, who reported on the given address, the landlord reported him that the assessee was a tenant and he has vacated the house 6-7 years back and the present whereabouts of the assessee is not known. Finally the notice u/s 148 was issued and served through affixture 29.03.2014 further, notice under sec. 142(1) alongwith questionnaire and for return dated 02.02.2015 issued."

After knowing the fact that the assessee is not residing at the address where the notice was sent through speed post the AO attempted to serve the notice through alternative mode of affixture. Since, the assessee has not left his current address or any other address where the authorities can send the communication or notice, therefore, the Assessing Officer cannot be held as fault for the service affected through affixation at the last non address. Hence, in the facts and

circumstances of the case the contention of the Id. AR cannot be accepted that the assessment orders framed by the AO for want of valid notice is void and liable to set aside. However, the appeals filed by the assessee against the assessment orders were dismissed by the Id. CIT(A) due to the delay in filing the appeal. The Id. CIT(A) thus, held that these appeals filed by the assessee are not maintainable. It is pertinent to note that when the assessee was undisputedly out of India and residing in Australia and has not received the notices issued by the AO as well as assessment orders passed U/s 144 r.w.s. 147 of the Act then the reasons explained by the assessee for delay in filing the appeals ought to have been accepted as a reasonable cause. The AO has accepted the fact that the assessee vacated the premises at which the assessee was earlier living as a tenant as back as 6-7 years back from the date of the notice issued U/s 148 of the Act. Even otherwise the assessee has explained the reasons for delay in the affidavit that he was out of India and holding passport of Australia. In the absence of receipt of notice as well as orders by the assessee there was a delay in filing the appeals. In view of the above facts and circumstances of the case we are satisfied that the assessee has explained a reasonable

cause for delay in filing the appeal accordingly, the delay in filing the appeals before the Id. CIT(A) is condoned.

7. Since, the Id. CIT(A) has not decided the appeals of the assessee on merits, therefore, the appeals arising from the ex- parte orders are set aside to the record of the Id. CIT(A) for giving one more opportunity of hearing to the assessee to explain the source of payment made through credit card.

8. The penalty orders passed U/s 271(1)(c) of the Act were also ex- parte order as nobody has appeared and the reasons for non appearance are the same as explained by the assessee in respect of the quantum of appeals. The Id. CIT(A) dismissed the appeal by treating the same as not maintainable due to delay. We have already considered the reasons for delay in filing the appeals in the quantum appeals accordingly, these being the consequential to the quantum proceedings, the appeals arising from the penalty orders are also set aside to the record of the Id. CIT(A) for deciding the same afresh after giving one more opportunity of hearing to the assessee as well as disposal of the quantum appeals.

In the result, all four appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 21/07/2020.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 21/07/2020.

*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Liju Kurain, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-5(4), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 902 to 905/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar